

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH** : **No. CR-624-2022**  
 :  
**vs.** :  
 :  
**DAWN SMITH,** :  
**Defendant** :

**OPINION AND ORDER**

The above-captioned matter came before the court on November 7, 2022 for a hearing and argument on the petition for writ of habeas corpus contained in Defendant’s Omnibus Pretrial Motion, which was filed on August 11, 2022. At the hearing, the Commonwealth presented the transcript of the preliminary hearing as Commonwealth’s Exhibit #1 and introduced additional testimony from Detective Sarah Edkin and Detective Curt Loudenslager.

Dawn Smith (“Defendant”) was charged with delivery of a controlled substance (fentanyl) and criminal use of a communication facility arising out of an incident which allegedly occurred on February 16, 2022.

At the preliminary hearing held on April 28, 2022, Detective Kevin Dent of the Lycoming County Narcotics Enforcement Unit (NEU) testified that on February 16, 2022, he and Detective Sarah Edkin were involved in a controlled buy utilizing a confidential informant (CI). He and Detective Edkin picked up the CI and they drove to a predetermined location where Detective Edkin strip-searched the CI outside of Detective Dent’s presence. The CI placed a phone call to another individual on speaker phone. The individual told the CI to come to Cherry Street in about 20 minutes. Detective Edkin did not know who the CI was calling or who the target was at that time. The detectives drove to the intersection of

Brandon (Avenue) and Cherry Street. The detectives gave the CI pre-recorded US currency. The CI got out of the vehicle and walked west to Cherry Street and south on Cherry Street. Detective Dent and Detective Edkin lost sight of the CI for one to two minutes. The CI returned to the detectives' vehicle and gave them 10 glassine bags (a bundle) of suspected fentanyl. The detectives and the CI departed the area and the CI was again strip-searched by Detective Edkin outside of his presence.

Detective Dent explained that fentanyl is typically packaged in a glassine or "waxine" (sic) style baggie with 10 baggies per bundle or in bulk in a knotted off tip of a sandwich baggie. Fentanyl is typically a white, powdery substance. He believed the substance in the bags was fentanyl because it was a white powdery substance packed in the same way that fentanyl would be packaged in this area. He admitted on cross-examination that heroin is packaged similarly to fentanyl and that he did not ever see Defendant on that date.

Detective Curt Loudenslager of the NEU testified at the preliminary hearing that he was conducting surveillance during a controlled buy on February 16, 2022. He was directed to pay particular attention to 924 Cherry Street because the lead detective suspected that the target, Defendant Dawn Smith, would be exiting that residence to meet the CI. He had been provided some sort of information so he would know what Defendant would look like. He observed the CI walk south on Cherry Street. When the CI got relatively in front of 924 Cherry Street, Detective Loudenslager observed Defendant walk out of 924 Cherry Street and walk up to the CI. They walked together a short distance south on Cherry Street, they exchanged something hand to hand and within seconds the CI changed direction and began to walk north on Cherry Street. Detective Loudenslager was approximately 50 yards away, and he was not using binoculars, a camera, or anything like that.

When asked on cross-examination if they were walking away from him, Detective Loudenslager testified that they came west on Rural so they would have been walking “head-on” before they turned south on Cherry Street. When Defendant was walking west, away from 924 Cherry Street, she would have been facing him. When they were walking together, they would have been walking away from him. They touched hands; it was more of a passing than a greeting or good-bye gesture. It appeared as if an item was exchanged but he could not say what item went back and forth between the two of them. He did not recall which hand Defendant or the CI were extending. They were walking next to each other during the exchange.

At the hearing on November 7, 2022, Detective Sarah Edkin testified that she utilized a CI to purchase fentanyl from Defendant in February 2022. She met the CI, and the CI placed a call on speaker to Defendant. She was not familiar with Defendant’s voice at that time, but she spoke with Defendant at her arraignment and she conducted an interview with her a week before this evidentiary hearing. She now recognizes the voice that was on the phone call with the CI as Defendant’s voice. During the phone call, the CI and Defendant arranged the purchase of a bundle of fentanyl. Defendant told the CI to meet on Cherry Street towards Rural Avenue. Surveillance was set up. Prior to the buy, Detective Edkin strip-searched the CI and no money or narcotics were on his or her person. Detective Edkin parked about mid-block on Brandon Avenue east of Cherry Street. The CI walked up Brandon and Detective Edkin lost sight of the CI as the CI turned south on Cherry Street. Detective Edkin lost sight of the CI for one to two minutes. Once the CI turned east back onto Brandon Avenue, the CI was back in Detective Edkin’s sight. The CI returned and turned over a bundle of suspected fentanyl. Detective Edkin again strip-searched the CI and

nothing was found.

Based on Detective Edkin's own observations alone, she did not know if the CI had contact with any other people. Detective Edkin testified, however, that there was unbroken surveillance of the CI. According to Detective Edkin, Detective Loudenslager picked up surveillance of the CI on Cherry Street.

Detective Loudenslager testified that he was involved in the investigation of Defendant. He indicated that he participated in a controlled buy in June of 2022. He participated in three buys within weeks of the June 2022 date. He did not recall the dates clearly. He did not testify regarding any events in February 2022.

## **DISCUSSION**

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). "The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence." *Commonwealth v. DiStefano*, 782 A.2d 574, 582 (Pa. Super. 2001);

*see also Commonwealth v. Jones*, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); *see also Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

“[F]or a defendant to be liable as a principal for the delivery of a controlled substance there must be evidence that he knowingly made an actual, constructive, or attempted transfer of a controlled substance to another person without the legal authority to do so.” *Commonwealth v. Murphy*, 577 Pa. 275, 844 A.2d 1228, 1234 (2004). A defendant actually transfers drugs whenever he or she physically conveys drugs to another person. *Id.*

To establish the offense of criminal use of a communication facility, the Commonwealth must present evidence to establish three elements: (1) the defendant knowingly and intentionally used a communication facility; (2) the defendant knowingly, intentionally or recklessly facilitated an underlying felony; and (3) the underlying felony occurred. *Commonwealth v. Moss*, 852 A.2d 374, 382 (Pa. Super. 2004).

When the evidence is viewed in the light most favorable to the Commonwealth and the court does not make any weight or credibility findings, the evidence presented is sufficient to establish a prima facie case that Defendant delivered a controlled substance to the CI and that she used a communication facility to arrange the transaction.

Detective Edkin testified that she met the CI. Detective Edkin had the CI place a phone call to her source on speaker so that Detective Edkin heard the conversation.

Although Detective Edkin was not familiar with Defendant's voice at that time, she spoke with Defendant at her arraignment and she conducted an interview with her a week before this evidentiary hearing. She now recognizes the voice that was on the phone call with the CI as Defendant's voice. During the phone call, Defendant and CI arranged the purchase of a bundle of fentanyl. Defendant directed the CI to come to Cherry Street in about 20 minutes. Detective Edkin strip-searched the CI to ensure that she did not have any money or controlled substances on his or her person. Detective Edkin and Detective Dent transported the CI to Brandon Avenue about a half block east of Cherry Street. The detectives gave the CI pre-recorded US currency. The CI got out of the vehicle and walked west to Cherry Street and south on Cherry Street. Although Edkin and Dent lost sight of the CI for one to two minutes, the CI was under constant surveillance. Detective Loudenslager observed Defendant exit 924 Cherry Street and meet with the CI. As they were walking, the CI and Defendant exchanged something hand-to-hand. The CI walked back to Brandon Ave and again met with Detective Edkin and Detective Dent. The CI provided them with a bundle of suspected fentanyl. Detective Dent testified at the preliminary hearing that fentanyl is typically packaged in a glassine or "waxine" (sic) style baggie with 10 baggies per bundle or in bulk in a knotted off tip of a sandwich baggie. Fentanyl is typically a white, powdery substance. He believed the substance in the bags was fentanyl because it was a white powdery substance packed in the same way that fentanyl would be packaged in this area. This evidence and the reasonable inferences that can be drawn from the evidence are sufficient to establish for prima facie purposes that Defendant delivered fentanyl, a controlled substance, to the CI and that she used a communication facility to arrange the transaction. While the Commonwealth may have created credibility issues when it called Detective

Loudenslager and he did not testify about any incident in February, credibility issues are issues for trial.

**ORDER**

**AND NOW**, this 24<sup>th</sup> day of April, 2023, the court DENIES Defendant's petition for writ of habeas corpus contained in her omnibus pretrial motion.

By The Court,

---

Nancy L. Butts, President Judge